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In re Application of :  
Ulrike Reeh et al. : DECISION ON PETITION  
Application No.: 09/221,789 : TO WITHDRAW THE  
Filing Date: December 28, 1998 : HOLDING OF ABANDONMENT  
Attorney Docket No.: 12406-003001 :  
:

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a) filed on July 3, 2003. There is no fee for this petition.

The petition is **GRANTED**.

The application was held abandoned for failure to file a proper reply to the Office action mailed on January 02, 2002. A Notice of Abandonment was mailed on June 25, 2003.

Petitioner asserts that a response to the Office action of January 2, 2002 was timely submitted to the Patent and Trademark Office (PTO). To support this assertion, petitioner has submitted a copy of the response (a "response", a check in the amount of \$110.00 and a petition for a one month extension of time) and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the response by the PTO on May 10, 2002.

A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on May 10, 2002 is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "(a) postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely received but lost after receipt thereof.

The copies of the "response" and the petition for a one month extension of time each include a Certificate of Mailing dated May 2, 2002 so the response would have been a timely response to the Office action of January 2, 2002 if the original response had been matched with the application file. In addition, Office records show that the \$110.00 check was received on May 10, 2002 and posted on May 14, 2002.

For the above stated reasons, the petition is granted. The Notice of Abandonment mailed June 25, 2003 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the response submitted with the petition on July 3, 2003 is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response as well as the Information Disclosure Statement (IDS) filed with the petition on July 3, 2003. The application file will then be forwarded to the examiner for appropriate action in due course.

Edward Westin

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